

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CHARLES OSBORNE
307 Fairview Street SE
North Canton, Ohio 44720

CASE NO.:



Individually and on behalf of
all similarly situated residents
of North Canton, Ohio

2013CV02037

Plaintiffs,

JUDGE:

vs.

A handwritten signature in blue ink, appearing to read "Aas".

CITY OF NORTH CANTON,
C/O MR. TIMOTHY FOX
LAW DIRECTOR FOR THE CITY
OF NORTH CANTON
145 NORTH MAIN STREET
NORTH CANTON, OH 44720

Defendant

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTION**

1. Plaintiff Charles Osborne ("Osborne"), on his own behalf and on behalf of all similarly situated residents of the City of North Canton, Ohio, seeks to have Ordinance No. 47-13 passed by the City Council of Defendant City of North Canton ("City of North Canton") on July 8, 2013, declared as invalid. Osborne asserts that Ordinance No. 47-13 is not a valid emergency ordinance in that the reasons for the declaration of the ordinance as an emergency are not specified and/or are insufficient to justify an emergency and/or are not valid reasons for an emergency. Plaintiff asserts that the ordinance was passed under false premises of emergency legislation so as to undermine the referendum right of the residents of North Canton, Ohio.

Parties, Jurisdiction and Venue

2. Osborne is an individual who lives in the City of North Canton, Stark County, Ohio. He is a person within the meaning set forth in Ohio Revised Code Section 2721.01.

3. Osborne is also a party whose rights, status, or other legal relations are affected by Ordinance No. 47-13 and is bringing this action to have determined a question of construction or validity arising under the ordinance as permitted by Ohio Revised Code Section 2721.03.

4. City of North Canton is a body politic and municipal corporation, which can be sued and whose conduct is governed by Ohio Revised Code Chapter Seven.

5. This Court is vested with jurisdiction over this matter: (a) under the general jurisdictional provisions set forth in Ohio Revised Code Section 2305.01, (b) under the specific statutes relating to declaratory judgments set forth in Ohio Revised Code Chapter 2721 and (c) under the specific provisions set forth in Ohio Rule of Civil Procedure 57.

6. Pursuant to Ohio Rule of Civil Procedure 3, venue is proper in that Stark County is the county in which the parties are located, and in which all or a portion of the activity relating to this action occurred.

7. Osborne brings this action individually and also as a member of the class of current residents of the City of North Canton, Ohio.

8. He asserts that the number of members of the class of current residents of the City of North Canton, Ohio, is so numerous that joinder of all members of the class is impracticable.

9. He also asserts that the questions as to the invalidity of an ordinance passed under the false premises of emergency legislation so as to undermine the referendum rights of the residents of the City of North Canton are questions of law and fact common to the class.

10. Osborne states that the claims set forth in this Complaint are typical of the claims of the class.

11. He further states that he will fairly and adequately protect the interests of the class.

12. Moreover, Osborne asserts that the prosecution of separate actions by individual members of the class may create inconsistencies or varying adjudications, which would establish incompatible standards of conduct.

13. Furthermore, the adjudication with respect to this matter as presented in this Complaint would as a practical matter be dispositive of the interests of the other members not parties to the adjudications.

Background of Dispute and Claims for Relief

14. For quite some time, the City Council of the City of North Canton has routinely passed legislation, which contains language asserting that the ordinance is being passed as emergency legislation when in fact no specific reasons for passage as emergency legislation existed.

15. Through the end of June 2013, ninety percent (90%) of the legislation passed by North Canton City Council was on an emergency basis. In 2012, ninety-three percent (93%) of the legislation passed was by emergency, in 2011, eighty-three percent (83%) was passed by emergency and in 2010, ninety-two percent (92%) of legislation was passed by an emergency. Clearly, the City of North Canton's use of emergency legislation is designed to prevent the

citizens of North Canton from exercising their rights under the Ohio Constitution and North Canton Municipal Charter.

16. The language used in prior legislation is identical to that language employed in Ordinance 47-13. (A copy of which is attached to this Complaint as Exhibit A and incorporated herein by reference).

17. Pursuant to the Charter of the Municipality of North Canton, Ohio, section 4.04 Salaries and Bonds, “the compensation of the Mayor and each member of Council shall be fixed at least thirty (30) days prior to the filing date of the nominating petitions for the terms beginning on the next succeeding first of December, and shall not be changed during the term of office or any part thereof.”

18. The present members of North Canton City Council have held office since December 1, 2011. In over nineteen months of this council’s term of office, City Council has had more than enough time to enact legislation increasing the Mayor’s and their own salaries without emergency legislation.

Claim for Relief

(Declaratory Judgment and Injunctive Relief)

19. The passage of Ordinance 47-13 under these circumstances, as emergency legislation when no emergency is specifically stated, and/or for an invalid or an inadequate reason, undermines the rights conferred upon the residents of the City of North Canton, Ohio, to petition for a referendum on the legislation, and undermines fundamental democratic principles reserved by the citizens of the State of Ohio under its constitution.

20. Such rights are conferred upon the people of the City of North Canton, Ohio under Section 1f of Article II of the Ohio Constitution, which reads that "The initiative and

referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

21. Osborne has an interest in the legislation as a resident of the City of North Canton. He is opposed to the legislation given the current financial situation of North Canton and desires to have the matter put to a referendum vote before the residents of the City of North Canton, Ohio, in the true spirit of democracy but his desire to have the matter placed on the ballot has been undermined by the passage of Ordinance No. 47-13 under the pretext of emergency legislation.

22. Such a charade by the proponents of the legislation, threatens to undermine the constitutional rights of the voters as set forth in the Ohio Constitution and therefore compels Osborne to bring this action so as to vindicate that right.

23. Such actions by certain officials of the City of North Canton, acting under color of state law, undermine certain civil rights of Plaintiffs for which they are entitled to recovery.

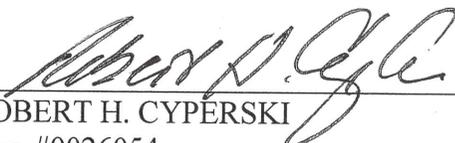
24. The City Council of the City of North Canton has passed legislation, which contains language asserting that the ordinance is being passed as emergency legislation when in fact no valid reasons for passage as emergency legislation existed or actual emergency existed. Further, unless enjoined from enforcing this ordinance the people of North Canton will be deprived of the rights under the Ohio Constitution and the Charter of the Municipality of North Canton to seek a referendum of Ordinance 47-13.

WHEREFORE, Osborne prays for the following:

1. That this Court declare Ordinance No. 47-13 declaring it an emergency is insufficient under Ohio law;

2. That this Court declare Ordinance 47-13 is invalid;
3. That this Court temporarily and permanently enjoin the enforcement of Ordinance 47-13;
4. That this Court order the payment of reasonable attorneys fees, costs and other relief as this Court deems appropriate;

Respectfully submitted,

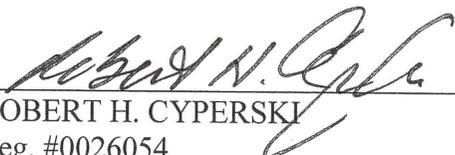


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Attorney for Plaintiffs

TO THE CLERK OF COURTS

Pursuant to Ohio Rule of Civil Procedure 4, please serve the named Defendant at the address indicated above with Summons and a copy of this Complaint



ROBERT H. CYPERSKI
Reg. #0026054
Attorney for Plaintiffs

RECORD OF ORDINANCES

Dutton Legal Blank, Inc.

Form No. 500-1

Ordinance No. 47-13 Passed July 8, 2013

6/18/13-gmk
(Personnel & Safety)

Ordinance No. 47-13

An ordinance establishing the rates of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013, and declaring the same to be an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

Section 1. That there be and are hereby established the following rates of compensation for the elected officials of the City of North Canton:

Mayor	\$ 1,450.00/month \$17,400.00/annually
President of Council	\$ 675.00/month \$ 8,100.00/annually
Council Members	\$ 600.00/month \$ 7,200.00/annually

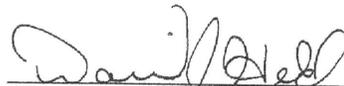
Section 2. That the aforementioned rates of compensation set forth in Section 1., be, and are hereby effective December 1, 2013.

Section 3. That effective December 1, 2013, Ordinance No. 52-02, be, and the same is hereby repealed.

Section 4. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

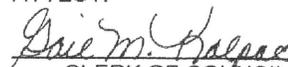
Section 5. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary to meet the Stark County Board of Election's filing deadline for the November 5, 2013 general election; wherefore, provided it receives the affirmative vote of six (6) or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

North Canton, OH
Passed: 7/8/13


MAYOR

SIGNED: 7/08, 2013

ATTEST:


CLERK OF COUNCIL